

CERTIFIED TRUE COPY

RECEIVED AND FILED
WITH THE
N.J. BOARD OF DENTISTRY
ON 11-24-93 cm.

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF DENTISTRY
DOCKET NO.

IN THE MATTER OF THE SUSPENSION	:	Administrative Action
OR REVOCATION OF THE LICENSE OF	:	
	:	
NICOLAS R. OSTELLA, D.M.D.	:	FINAL DECISION AND
	:	ORDER
	:	
TO PRACTICE DENTISTRY IN THE	:	
STATE OF NEW JERSEY	:	
	:	

This matter was opened to the New Jersey State Board of Dentistry (hereinafter "Board") pursuant to the terms of a Consent Order filed August 31, 1993. This matter originally came to the Board's attention upon receipt of information that on or about April 3, 1992, a Judgment of Conviction was entered in the New Jersey Superior Court, Essex County, wherein respondent entered a plea of guilty to one count of endangering the welfare of a child in violation of N.J.S.A. 2C:24-4, amended from a third degree crime to a fourth degree crime. The guilty plea was entered on or about March 2, 1992, wherein respondent pled guilty to the seventh count of a seven count indictment. The Honorable Betty J. Lester sentenced the respondent to three years of probation with conditions of probation including participation in 300 hours of community service and no contact with the victims.

On August 31, 1993 respondent entered into a Consent Order with the Board. In the August 31, 1993 Consent Order

respondent stipulated to the truth and accuracy of certain factual statements and agreed to the entry of same into the record of the formal hearing in the above captioned matter before the Board. By way of the Consent Order, respondent acknowledged that the conviction for fourth degree, endangering the welfare of a child, is a crime of moral turpitude and/or a crime relating adversely to the dental profession in violation of N.J.S.A. 45:1-21(f). The Consent Order further recited that during the course of the investigation of the aforementioned matter it was further disclosed to the Board that from the period commencing January 1988 through May 1989 respondent prescribed certain prescription legend drugs, as well as Valium, a Schedule IV Controlled Dangerous Substance, for a patient G.R., with whom he had developed an intimate relationship and that the majority of such prescriptions were written for purposes unrelated to the practice of dentistry. Respondent acknowledged in the Consent Order that by prescribing in this manner he engaged in professional misconduct as determined by the Board and/or has failed to comply with the provisions of the Dental Practice Act in violation of N.J.S.A. 45:1-21(e) and/or (h) respectively. By way of the Consent Order respondent admitted the aforementioned conduct provides grounds for the suspension or revocation of his license to practice dentistry pursuant to N.J.S.A. 45:1-21(f). Finally, the Consent Order provided that respondent would be afforded the opportunity to appear with counsel to address the Board in mitigation of penalty. (A copy of the Consent Order is attached

hereto and incorporated in the within Order in its entirety by reference.)

A hearing in mitigation of penalty was held on November 3, 1993. Respondent was represented by Edward A. Wiewiorka, Esq. The Attorney General of New Jersey appeared through Kathy Rohr, Deputy Attorney General.

Edward Wieworka presented argument on behalf of respondent with respect to the conviction. Initially, Mr. Wieworka pointed out the underlying facts with regard to the indictment, and the conviction of Count 7 of that indictment. He also discussed the motivating factors which led respondent to plea to Count 7 of the indictment. Counsel advised the Board that the factual basis for Count 7, a crime of the fourth degree, endangering the welfare of a minor, indicates that on one occasion when respondent was in the household of G.R., making love to G.R., one of G.R.'s minor daughters entered the house, came upstairs and saw respondent without clothes on. Furthermore, counsel attempted to characterize the offense to which respondent pled and of which respondent was convicted as an offense which did not amount to a crime. In citing to a recent Appellate Division decision in another criminal case, he urged the Board to consider the offense of which respondent was convicted as not being a crime, even though that very offense was accepted and treated as a crime in the criminal proceeding.

Respondent testified on his own behalf concerning his prescribing certain medications for G.R. which, for the most

part, were for non-dental purposes. He stated that he realized that he exercised bad judgment in prescribing medication for her which was not for a dental purpose. He represented that he prescribed prescription legend drugs and Valium, a Schedule IV Controlled Dangerous Substance for G.R., a registered nurse, for the sake of her convenience. He testified that he felt her own medical doctor would have prescribed these medications for her. The respondent attributed his conduct to the fact that he was involved in a relationship with her and he thought she was a responsible person.

Respondent further testified concerning his relationship with G.R., and the impact that relationship had on his dental practice and his life. He stated that once G.R.'s husband, J.R. was informed by G.R. that she had a relationship with respondent and intended to divorce J.R., and marry respondent, respondent's life became a nightmare. Respondent represented that in May of 1989 G.R. died of a massive dose of insulin and shortly thereafter J.R. orchestrated a campaign of threats and extortion against respondent. During that period, in December 1989, respondent was arrested for the offense which resulted in the conviction at issue. Respondent testified that as a result of those events he gave up his private dental practice, was terminated from employment at Mountainside Hospital, Montclair, New Jersey and virtually hid out in fear of his life for a period of two and one half years. Respondent indicated that he has returned to the Montclair community and is

currently working on a per diem basis for a dentist in Paterson and Fairlawn and treats a few patients in his home dental office.

On behalf of respondent, Mr. Wieworka argued that respondent is a good dentist who enjoyed a fine reputation until these events happened. Counsel urged the Board to take into consideration the two and one half year lost practice time for respondent.

The Deputy Attorney General argued that the conviction at issue speaks for itself: i.e., that it exists and the conviction exists regardless of the fact that a deal was struck to make it go away or the fact that an Appellate Decision in another criminal case found that a similar factual basis did not amount to a crime. The Deputy Attorney General maintained that the this conviction is on the record and the Board can look at it and weigh it on its face. The Deputy Attorney General pointed out that the Attorney General's Office was taking no position in regard to the imposition of a penalty.

The Board conducted its deliberations in Executive Session on November 3, 1993. The Board thoroughly considered the record before it. Notwithstanding the dramatic changes in respondent's life and the hardship he had to face, the Board must take into account respondent's criminal conviction and respondent's admitted violations of the laws of this State concerning the practice of writing prescriptions for non-dental purposes.

Although counsel attempted to persuade the Board that

the underlying conduct for which respondent stands convicted -- a fourth degree crime of endangering the welfare of a child by allowing a minor to see him naked on one occasion -- is not deemed to be a crime in another criminal case, such as interpretation of the offense at issue ought not to be the basis for disciplinary action by this Board. For indeed, respondent clearly admitted in the Consent Order of August 31, 1993 that the offense for which he was convicted constitutes grounds for disciplinary action by this Board. Accordingly, respondent is foreclosed from arguing to this Board that the offense at issue is not a crime.

The Board finds that there is ample basis for sanctions against respondent in light of his conduct of prescribing medications for G.R. for non-dental purposes. Inappropriate prescribing by professionals is a serious problem in this State and the Board is duty bound to act to deter such unlawful conduct. The authority to practice dentistry in the State of New Jersey is a privilege not to be taken lightly. As unfortunate as respondent's circumstances may have been, the Board cannot let sympathy for the licensee outweigh its greater duty to assure confidence in the integrity of licensees to those individuals who seek dental services.

IT IS, THEREFORE, ON THIS 24th DAY OF November, 1993
ORDERED THAT:

1. The license of the respondent to practice dentistry in the State of New Jersey shall be and is hereby suspended for a

period of five years. Eighty-nine (89) days of this suspension shall be an active suspension and shall commence on the twentieth (20th) day after the entry of this Order. The remaining period of suspension shall be stayed and shall constitute a probationary period. Upon receipt of verbal or written information that respondent has failed in any manner whatsoever to comply with the within terms and conditions, the Board may activate the stayed suspension on short notice to the respondent (no less than ten (10) days), and after affording the respondent the opportunity to contest such activation in a hearing before the Board, at a time and place to be set by the Board. During the period of active suspension, respondent shall derive no financial remuneration directly or indirectly related to patient fees paid for dental services rendered by other licensees for patients of respondent's practice.

On the effective date of the suspension period respondent shall submit any and all wall certificates including, but not limited to, his dentistry license, CDS and DEA registrations to the Board of Dentistry at 124 Halsey Street, Sixth Floor, Newark, New Jersey 07102 or surrender such credentials to the Board's designee.

2. During the period of time in which respondent's dentistry license is suspended, respondent shall not own or otherwise maintain a pecuniary or beneficial interest in a dental practice or function as a manager, proprietor, operator, or conductor of a place where dental operations are performed, or

otherwise practice dentistry within the meaning of N.J.S.A. 45:6-19.

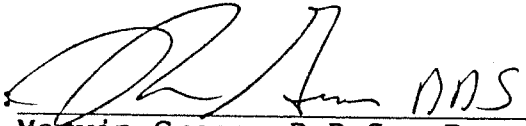
3. Respondent shall be assessed a civil penalty in the amount of Two Thousand Five Hundred (\$2,500) Dollars. Said penalty shall be submitted by certified check or money order made payable to the State of New Jersey to the Board of Dentistry at 124 Halsey Street, Newark, New Jersey 07102 no later than sixty (60) days after the filing of the within Order.

4. Respondent shall pay the sum of \$3,574.81 as costs of the investigation and of the proceedings in this matter. Such costs shall be payable by certified check or money order to the State Board of Dentistry within thirty (30) days of the entry date of this Order.

5. Respondent shall perform three hundred (300) hours of dental community service in a program selected by the Board. Said community service shall be completed within one year of the date that respondent's license has been reinstated. Respondent shall be advised in writing of the name of the program and of the person who will supervise the performance of the dental services. In the event the community service is discontinued at the designated facility for any reason whatsoever, the balance of the required hours shall be completed at an alternate facility named by the Board.

6. Respondent may apply for modification of the terms and conditions of the within Order no sooner than one (1) year from the entry date herein.

STATE BOARD OF DENTISTRY

By:  ADS
Marvin Gross, D.D.S., President